

1 JUDGE SIPPEL: Back on the record.

2 I -- I went off the record. I was trying to  
3 address the -- the need for moving this along because  
4 of the witnesses' travel arrangements.

5 If all you're going to do is go down through  
6 these things, and -- and elicit similar testimony,  
7 I'm -- I'm -- I've heard enough, I mean I really have.

8 I -- I -- I appreciate what this witness had  
9 done, in terms of participating in these activities,  
10 but there's been a continuing objection from Ms. Franco  
11 and Mr. Tillotson, and they're absolutely correct,  
12 you're really limited to what you put on your witness  
13 in your direct case, and I've given you some leeway to  
14 go into this, because of cross examination, but this is  
15 where it has to stop.

16 Do you have any other subjects that you want  
17 to talk to this witness about?

18 MR. LYNCH: I don't believe so.

19 JUDGE SIPPEL: All right.

20 Is there anything more that you wanted to  
21 elicit from this witness?

22 MS. FRANCO: Could we do just a brief recross  
23 to clarify one or two things that Mr. Lynch -- one or  
24 two programs that Mr. Lynch --

25 JUDGE SIPPEL: All right -- all right, you

1 may proceed.

2 RECROSS EXAMINATION

3 BY MS. FRANCO:

4 Q Mr. Jacobson, you -- you testified that you  
5 started in -- in the fall of 1989 with WYLR?

6 A Yes.

7 Q And you can only attest to the programs that  
8 ran from that point on. Is that correct?

9 A Yes.

10 Q Could we refer back to your testimony about  
11 the Angela Williams Benefit on page 6-16 of the  
12 exhibit. The dates that this ran was December of 1988,  
13 so that is before you were, supposedly, at the station,  
14 at WYLR?

15 A I did it -- I did the -- I did the remote.

16 Q For what station?

17 A For WYLR.

18 Q But you just said that you only started at  
19 WYLR in the fall of 1989?

20 A I started at WYLR full time in the fall of  
21 1989.

22 Q And before that time?

23 A Before that, when announcers on WYLR were on  
24 vacation or had prior commitments that they had to do,  
25 I would do FM air shifts on WYLR, and I did a lot -- a

1 lot of remotes for WYLR for years before that.

2 MS. FRANCO: Okay, no further questions.

3 JUDGE SIPPEL: Does the Bureau have anymore?

4 MS. LADEN: No questions, Your Honor.

5 JUDGE SIPPEL: With respect to this proffer,  
6 I -- did you participate in -- in putting this proffer  
7 together, did you prepare any of the proffer?

8 THE WITNESS: I didn't participate in  
9 preparing the proffer. Mr. Lynch prepared the proffer,  
10 came in and asked me for an affidavit, to look at the  
11 proffer to see if there was anything on there that was  
12 wrong.

13 JUDGE SIPPEL: And -- and did you consult any  
14 documents, when you did this review of the proffer?

15 THE WITNESS: I consulted what -- what I did,  
16 anything that was on there that I did during my time  
17 with WYLR.

18 If you want to talk about documents, I did  
19 consult letters that we received from the organizations  
20 after these events, telephone calls that I had gotten  
21 from these people, plaques that I had gotten from all  
22 of these people and the station had gotten from all  
23 these people, once these events were done.

24 So, there was documentation proof that these  
25 events did actually occur. They started, they matured

1 and they occurred.

2 JUDGE SIPPEL: But there was not a -- was  
3 there a -- a -- the log or a -- a continuing record  
4 that the company maintained that you referred to, or  
5 were these just things that -- that you just happened  
6 to recollect?

7 THE WITNESS: Well, the -- we did have the --  
8 the log I mean for -- Tri-County Notebooks are  
9 continuing ongoing PSA files, which was just you  
10 rotate, you read one, flip it, read another one the  
11 next hour, flip it. That's Tri-County Notebooks.

12 The push sheet is what -- is what -- most of  
13 the events in the proffer, and those were heavy duty  
14 events that were on push sheet status, and the push  
15 sheet was not anything that was ever on the log.

16 JUDGE SIPPEL: That was maintained as a  
17 separate record?

18 THE WITNESS: As a -- as a sep -- yeah, was  
19 its own separate entity.

20 JUDGE SIPPEL: I have nothing further.  
21 Anything more?

22 MS. FRANCO: No, Your Honor.

23 JUDGE SIPPEL: You're excused as a witness.  
24 You're not to talk about your testimony until all the  
25 testimony is completed here. Do you understand?

1 THE WITNESS: Yes, Your Honor.

2 JUDGE SIPPEL: All right, you may -- you may  
3 leave the courtroom and -- and --

4 THE WITNESS: I'll hand this --

5 JUDGE SIPPEL: I would leave them right  
6 there.

7 (Witness excused.)

8 Let's go off the record.

9 (Discussion off the record.)

10 JUDGE SIPPEL: Back on the record.

11 All right, we have another -- another  
12 witness. Before we get to the testimony, however, do  
13 you have a -- you've indicated, Mr. Tillotson, you have  
14 a stipulation now?

15 MR. TILLOTSON: Yes. Let me try to state it.  
16 This relates to the proposed testimony of Mayor Francis  
17 F. Okeith, which was resubmitted as Lynch -- Normandy  
18 Exhibit 11-26, and -- and Mr. Okeith was originally  
19 admitted, subject to cross examination.

20 I -- we -- we have agreed that if -- a  
21 stipulation would be that if Mr. Okeith were cross  
22 examined concerning his statement, he would testify  
23 that his knowledge of Normandy and Mr. Lynch's  
24 involvement in the community is primarily through the  
25 activities and the -- and Mr. Lynch's activities and

1       the activities of Radio Station WWSC, and that the  
2       Mayor does not have much involvement with or knowledge  
3       of the programming and community activities of WYLR,  
4       and that insofar as he speaks about Mr. Lynch  
5       supporting the community and taking -- and taking  
6       initiative in community events, again, he's primarily  
7       speaking of Mr. Lynch by way of the Radio Station WWSC.

8               JUDGE SIPPEL: That's the AM station?

9               MR. TILLOTSON: That's the AM station, and  
10       that's -- with that stipulation, we would not need to  
11       examine Mr. -- the Mayor to get that information on the  
12       record.

13              JUDGE SIPPEL: All right. Do you accept that  
14       stipulation, Mr. Lynch?

15              MR. LYNCH: Yes. We advanced Mayor Okeith's  
16       affidavit mainly in -- in Exhibit 10, as part of either  
17       award or testimonial of WYLR or its management, and --  
18       and I -- I take this mainly as a personal --

19              JUDGE SIPPEL: Personal endorsement?

20              MR. LYNCH: That is right.

21              JUDGE SIPPEL: All right, I hear you, and  
22       I'll accept the stipulation, and having accepted the  
23       stipulation, I think it's now appropriate to receive  
24       page 26 of Exhibit 11, and I will so order, at this  
25       time, that my previous order of striking page 26 of

1 Exhibit 11 is reconsidered and page 26 is now in  
2 evidence, along with the rest of Exhibit 11, and we can  
3 now go forward.

4 (The document heretofore  
5 marked for identification  
6 as Normandy Exhibit 11, page  
7 26 was received in evidence.)

8 MR. LYNCH: Your Honor?

9 JUDGE SIPPEL: Yes?

10 MR. LYNCH: Also, over the recess, we got a  
11 second copy of our Exhibit 11, if you would like to  
12 receive that.

13 JUDGE SIPPEL: Well, you can just pass that  
14 up to me.

15 MRS. LYNCH: Is it all right if it's blue?

16 JUDGE SIPPEL: Pass it up to me, please?

17 Mr. -- Mr. Dusenberry, is that correct?  
18 You're Mr. Dusenberry?

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: If you would stand and raise  
21 your right hand?

22 Whereupon,

23 RICHARD CHARLES DUSENBERRY  
24 was called as a witness, and having been first duly  
25 sworn, was examined and testified, on his oath, as

1 follows:

2 JUDGE SIPPEL: Please be seated.

3 State your full name and address -- current  
4 residence for the record, please?

5 THE WITNESS: Richard Charles Dusenberry,  
6 3071 Ellsworth Road, Lake George, New York.

7 JUDGE SIPPEL: Ms. Franco, you may proceed.  
8 Your witness.

9 CROSS EXAMINATION

10 BY MS. FRANCO:

11 Q Mr. Dusenberry, I wonder if I could refer you  
12 to your affidavit. Do you have a copy of it in front  
13 of you?

14 A I don't believe so. I have a copy of Mr.  
15 Jacobson's, but --

16 MS. FRANCO: Mr. Lynch, could you provide him  
17 with your copy?

18 JUDGE SIPPEL: Let's go off the record until  
19 he has it.

20 (Discussion off the record.)

21 JUDGE SIPPEL: On the record.

22 What exhibit number does that appear at?

23 MS. FRANCO: This is Exhibit 9-4, Normandy  
24 Exhibit.

25 THE WITNESS: I have it.



1 JUDGE SIPPEL: You may proceed.

2 BY MS. FRANCO:

3 Q Could you look at the last paragraph of your  
4 affidavit where you state that "In the six years I've  
5 been employed by Normandy Broadcasting, both WWSC and  
6 WYLR have done more community service than any other  
7 local radio station."

8 Do you mean the two stations combined or do  
9 you mean them individually?

10 A Each individual station was my intent.

11 Q Pardon me?

12 A Each individual station was my intent, not --  
13 not as a -- each station has done a fair amount of  
14 community service, in comparison to other radio  
15 stations.

16 Q What is your basis for knowing what other  
17 radio stations do?

18 A I -- my only basis is that I have been  
19 employed at one other broadcast outlet in the market,  
20 and that's the only -- I -- I know what we did then,  
21 and I know what our operation does now, and I know that  
22 there's no comparison.

23 Q What -- that was a station in Glens Falls  
24 also?

25 A Yes, it was.

1           Q     So, your only comparison is with one other  
2     station?

3           A     Two other stations.

4           Q     Two other stations. What was the other  
5     station?

6           A     It was an AM-FM combo, WBZA-WAYI.

7           Q     Did you calculate up the number of PSAs they  
8     did, or do you know if they did any public affairs  
9     programming at these other stations?

10          A     I do not know.

11          Q     How many -- how many other stations are there  
12     in the market?

13          A     In the immediate Glens Falls Metro, not  
14     including a station in Corinth, which I am not  
15     including in that, I -- if my calculations are correct,  
16     there are five other radio stations in Glens Falls, in  
17     addition to our two stations.

18          Q     So, your comparison is just with two of those  
19     other stations?

20          A     That's what I have a first hand knowledge of,  
21     as an employee there.

22          Q     In the preceding paragraph, you talk about  
23     WYLR's format and listenership, and I -- I want to ask  
24     you what is it about WYLR's listenership that makes you  
25     not able to do more than just PSAs and short spots?

1           A     I don't believe that I was ever alluding to  
2     that fact in this affidavit.  W --

3           Q     It says the most --

4           A     WYLR's format -- excuse me.  If I can finish,  
5     WYLR's format was geared toward an 1849 demographic,  
6     and in many instances, we also had a low end  
7     listenership.  We had some team numbers, which we  
8     serviced through short wide reads, as opposed to 60  
9     second, in some instances, and as opposed to 60 second  
10    pre-recorded announcements, so we could adlib our way  
11    through it.

12                     Our format was personality oriented, which  
13    means if you can adlib a promo, it's much better than a  
14    pre-recorded promo, in my estimation.  That's what that  
15    statement says.

16           Q     But you don't do any regular scheduled public  
17    affairs programs on WYLR.  Is that correct?

18           A     What, if I may ask, is your definition of  
19    public affairs programs?

20           Q     Okay, what is your definition of it?

21           A     As I see a public affairs program, a public  
22    affairs program is a specific program allotted a  
23    specific time or a number of minutes in a week or a  
24    month or whatever, devoted specifically to one issue or  
25    a public affairs forum.

1 Q Did you -- is that done on WYLR?

2 A WYLR was, at the time, was a music intensive  
3 radio station, so, no, we would not -- we would not  
4 format a talk public affairs program.

5 Q Okay. Thank you. That's enough.

6 MS. FRANCO: I have no further questions.

7 JUDGE SIPPEL: All right.

8 Does the Bureau have any cross of this  
9 witness?

10 MR. SCHONMAN: Your Honor, can we have just  
11 one moment?

12 JUDGE SIPPEL: Let's go off the record for a  
13 minute.

14 (Discussion of the record.)

15 JUDGE SIPPEL: Back on the record.

16 MR. SCHONMAN: The Bureau has no questions.

17 JUDGE SIPPEL: Any redirect?

18 MR. LYNCH: Very briefly.

19 REDIRECT EXAMINATION

20 BY MR. LYNCH:

21 Q You state in your affidavit that you believe  
22 WWSC and WYLR, and for this question specifically, WYLR  
23 does more in and for the community than the average  
24 station in the community. Is that correct?

25 A That's my statement, yes.

1 Q Okay. You did work for two other radio  
2 stations in the market?

3 A Yes.

4 Q Are -- do you know any other people who work  
5 in other stations? Are you aware -- do you listen?  
6 Are you aware of other stations' public affairs or  
7 public service programs?

8 A As a -- at -- at this time, as a casual  
9 listener, yes. At the time that I was Program Director  
10 for WYLR, I was a much more active listener to other  
11 radio stations, because it was part of my job.

12 Q So, over a period of time, you have some idea  
13 of what happened in the entire market, as far as  
14 servicing the community?

15 A I would have some idea.

16 MS. FRANCO: It's a leading question.

17 JUDGE SIPPEL: I sustain the objection.

18 BY MR. LYNCH:

19 Q Did you take this into account when --

20 MR. LYNCH: I'm sorry, Your Honor.

21 JUDGE SIPPEL: Well, I say it calls for a  
22 conclusion, and I'm sustaining her objection. You'll  
23 have to either go to another line of questioning or try  
24 and rephrase it.

25

1 BY MR. LYNCH:

2 Q Did you take said experience into account  
3 when you signed this affidavit?

4 MS. FRANCO: Objection.

5 JUDGE SIPPEL: I'll sustain that. He's  
6 some -- he's -- he is what he is when he signed it.

7 MR. LYNCH: Okay.

8 BY MR. LYNCH:

9 Q How would you describe the format of WYLR --  
10 musical format of WYLR in your tenure as Program  
11 Director?

12 A I believe, technically, we were listed as Top  
13 40. We were what I would call Adult Top 40.

14 Q Okay, but we were definitely going for  
15 younger people?

16 MS. FRANCO: Leading.

17 JUDGE SIPPEL: What is -- what is this  
18 adult -- how does that enter into it, adult format in  
19 the industry?

20 THE WITNESS: What I believe has happened,  
21 during the time that I was programming, sir, is that  
22 the Top 40, or contemporary hit radio format became  
23 very fragmented and the music, in that format, was  
24 geared toward a much younger demo than we really wanted  
25 to reach. We still wanted -- didn't want to be an

1 adult contemporary station.

2 JUDGE SIPPEL: You did or did not want to be?

3 THE WITNESS: We did not want to be a  
4 blatantly adult contemporary station, but we wanted to  
5 maintain a musical edge that kept as close to Top 40 by  
6 not playing everything that was on the Top 40 list.  
7 Some things -- just certain -- certain things we -- I  
8 deemed were not appealing to a listener of 35 years of  
9 age.

10 JUDGE SIPPEL: Now, I'm -- I'm sorry, I don't  
11 understand. Is your testimony that you -- you wanted  
12 to reach more of that 35 year old and older age -- age  
13 group, or you didn't want to reach them?

14 THE WITNESS: I did.

15 JUDGE SIPPEL: You did?

16 THE WITNESS: Yes.

17 JUDGE SIPPEL: And that's what your format --  
18 your music format then was geared to do?

19 THE WITNESS: That was its intent, yes.

20 JUDGE SIPPEL: That was its intent, all  
21 right.

22 BY MR. LYNCH:

23 Q With surveys over the time, you have the  
24 intent. What -- what was the actual execution of the  
25 format? Was it older or younger than the average radio

1 in the market? Was the average listener older or  
2 younger than the average in the marketplace?

3 MS. FRANCO: That's was not really gone into  
4 on cross.

5 JUDGE SIPPEL: Well, it's -- as I say, it's -  
6 - the -- the term of adult has me confused -- it had me  
7 confused until he explained it. I didn't know what he  
8 meant.

9 I don't want to spend a lot of time on that,  
10 but you're asking the question did they -- did he  
11 achieve his -- does he feel that he achieved the goal  
12 of reaching an adult audience with his music? Is that  
13 what your question is?

14 MR. LYNCH: The question is specifically what  
15 was the average age of the listener there, and which  
16 will develop --

17 JUDGE SIPPEL: Wait a minute. We don't need  
18 all of that. I mean that's going too -- again, it's  
19 getting -- it's too narrow.

20 He's testified as to what he means by adult  
21 audience and -- and were you -- do you think you were  
22 successful in reaching an adult audience with your  
23 music?

24 THE WITNESS: I was successful to a point.

25 JUDGE SIPPEL: To a point.



1 BY MR. LYNCH:

2 Q Okay, that's going nowhere. Let me move on.  
3 One -- one last question and off to the  
4 train.

5 Discussing public affairs programming of the  
6 station, your -- your testimony -- your -- your best  
7 knowledge of public affairs is a discussion of vital  
8 issues of a single issue of public reports?

9 JUDGE SIPPEL: Now, I'd like you to be  
10 careful now. I'm not so sure that he said all of those  
11 things. He testified as to what he thought public  
12 affairs broadcasting was.

13 Do you have a question to ask him?

14 MR. LYNCH: Yes.

15 BY MR. LYNCH:

16 Q Scheduled on either annual -- well, did you  
17 hear any public affairs on YLR during your tenure as  
18 Program Director?

19 A Yes, I heard public affairs. I did not hear  
20 public affairs programs, in my definition of that  
21 statement, which I already stated.

22 Q If I -- if I said that a public affairs  
23 program could be scheduled once a year, four weekends a  
24 year, would that change your answer at all?

25 MS. FRANCO: That's leading, Your Honor.

1 JUDGE SIPPEL: Well, that's -- I -- I don't  
2 know what -- there's no -- you have to -- you have to  
3 go into a foundation for that type of a question. I  
4 don't understand that.

5 MR. LYNCH: Okay.

6 JUDGE SIPPEL: He's answered. He's -- he's -  
7 - you've asked the question and he's answered it, and  
8 if you're going to get into a debate as to whether or  
9 not he means what you mean and you're going to start  
10 trying to move his testimony in another direction, then  
11 that's not allowed.

12 MR. LYNCH: Let me see if I can do that one  
13 for -- hopefully, it will be the final questions.

14 BY MR. LYNCH:

15 Q Can you give me examples of the public  
16 affairs you just referred to, the type of public  
17 affairs that you heard over your radio station under  
18 your tenure over the period of '89-'90?

19 A We -- the public affairs that we broadcasted  
20 and covered were campaigns. I would not classify them  
21 as public affairs programs. We had specific campaigns  
22 for a number of different issues.

23 Q Can you mention some specific issues and some  
24 specific --

25 JUDGE SIPPEL: No, no, no. That's going --

1           again, you're going too far afield with this.

2                       He's -- you know, he's test -- he's -- he's  
3           explained what his testimony is, as -- as set forth in  
4           his affidavit. He's been cross examined in certain  
5           very narrow areas. You got into those very narrow  
6           areas, and now you're going beyond that. So, I'm not  
7           going to permit those questions.

8                       MR. LYNCH: Okay. Your Honor, if I could  
9           borrow his affidavit back? That's the only copy that I  
10          brought down.

11                      JUDGE SIPPEL: Whose affidavit, the  
12          witness's?

13                      MR. LYNCH: If I may, please?

14                      JUDGE SIPPEL: You want to take a look at it  
15          one more time?

16                      MR. LYNCH: Please?

17                      JUDGE SIPPEL: All right, let's go off the  
18          record.

19                      (Discussion off the record.)

20                      JUDGE SIPPEL: Back on the record.

21                      MR. LYNCH: Excuse me?

22                      JUDGE SIPPEL: You've covered it all?

23                      MR. LYNCH: I've covered everything I'm  
24          interested in covering right now very well.

25                      Thank you.

1 JUDGE SIPPEL: All right, then you're excused  
2 as a witness, Mr. Dusenberry.

3 THE WITNESS: Thank you.

4 (Witness excused.)

5 JUDGE SIPPEL: Do we have any other business  
6 to conduct this afternoon? That concludes your -- all  
7 your evidence, Mr. Lynch?

8 MR. LYNCH: Yes, Your Honor.

9 JUDGE SIPPEL: All right, Mr. Tillotson?

10 MR. TILLOTSON: Yes, Your Honor.

11 JUDGE SIPPEL: All right, Ms. Laden?

12 MS. LADEN: Yes, Your Honor.

13 JUDGE SIPPEL: All right, let's go off the  
14 record for just a minute.

15 (Discussion off the record.)

16 JUDGE SIPPEL: Back on the record.

17 I'm going to set these records -- these dates  
18 rather for further action in this case.

19 This hearing record is closed as of today,  
20 except for corrections to the transcript. Gauging  
21 transcript delivery to be about September 14, the  
22 corrections must be filed by the 25th of September, and  
23 I -- if possible, I would prefer that to be done by a  
24 stipulation, where all the corrections can be  
25 incorporated in one document, but that's not a

C E R T I F I C A T E

This is to certify that the attached proceedings  
before the FEDERAL COMMUNICATIONS COMMISSION

in the matter of: GLEN FALLS, NEW YORK

Docket Number: 92-6

Place: WASHINGTON, DC

Date: SEPTEMBER 1, 1992

were held as herein appears, and that this is a true  
and accurate record of the proceedings.

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